

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CRIMINAL ACTION NO. 02-10360-RWZ

UNITED STATES OF AMERICA

v.

DONIELVER INGRAM

MEMORANDUM OF DECISION

September 12, 2003

ZOBEL, D.J.

On October 30, 2002, defendant Donielver Ingram was charged with being a felon who knowingly possessed “in and affecting commerce” two .22 caliber bullets in violation of 18 U.S.C. § 922(g)(1). After a trial, the jury returned a guilty verdict on June 18, 2003. Defendant has now filed a Post-Trial Motion for Judgment of Acquittal or, in the Alternative, Motion for New Trial.

First, defendant contends that he is entitled to an acquittal because “the chain of custody [as to the bullets] was so broken that no jury could find that the bullets introduced were knowingly possessed by Mr. Ingram.” Describing the chain of custody, defendant notes that the detective who originally discovered the bullets in defendant’s apartment, Detective Benton, did not look at the headstamps on the bullets before placing the two bullets into a smaller envelope within a larger envelope. When the bullets were logged into the ballistics unit, only one headstamp was noted. Later, another detective saw that the clasp on the smaller envelope had broken off and he

replaced it with tape. He also noticed that the other bullet had a “U” headstamp, but he did not add that to the ballistics worksheet. When a former ATF agent examined the bullets, he noticed an “X” marked on the projectile portion of each. In September of 2002, Detective Benton logged the bullets out of the ballistics unit for six days. Based on these facts, defendant contends that the “break in the chain and material alteration in the exhibit” is such that no rational trier of fact could find that either bullet was the same as the ones that were seized.

The Court must find that it is “reasonably probable that the evidence is what it purports to be. . . .” United States v. Ladd, 885 F.2d 954, 956 (1st Cir. 1989). A showing of sloppiness and weakness in the protocol and handling of evidence speaks to the weight of the evidence, while a missing link would go to its admissibility. Id. “In the last analysis, the prosecution’s chain-of-custody evidence must be adequate—not infallible.” Id. at 957. Here, there was no missing link; that Detective Benton did not explain why he logged out the bullets for six days does not break the chain. It is undisputed that he had the bullets during that time. Likewise, the broken clasp on the smaller envelope does not break the chain since it was replaced by tape. Defendant states that “[n]othing held the envelope closed.” (Def.’s Post-Trial Motion at 2). But the smaller envelope was kept inside of a larger envelope, which remained intact. Furthermore, the evidence suggests that the various people who handled the exhibit observed different but not inconsistent aspects of the bullets. Nothing in the record supports the notion that the exhibit was materially altered. Therefore, a rational jury could have and did, in fact, find that the bullets introduced were knowingly possessed by defendant.

Defendant also asserts that the proof of a nexus to interstate commerce was inadequate. However, “it remains the law that where a federal criminal statute contains a jurisdictional element requiring proof that an object was ‘in or affecting’ commerce, [such as 18 U.S.C. § 922(g)(1),] the government need only meet the ‘minimal nexus’ test. . . .” United States v. Cardoza, 129 F.3d 6, 11 (1st Cir. 1997). Defendant’s argument that Cardoza was wrongly decided is unavailing.

In the alternative, defendant seeks a new trial on the grounds that: (1) the Court erred in admitting the bullets into evidence, and/or (2) the Court erred in instructing the jury that it could convict if it found that one of the two bullets came from defendant’s apartment. As noted above, at trial, the prosecution established the chain of custody and, in doing so, established that it was reasonably probable that the bullets had not been materially altered since the time of the crime. Because it is reasonably probable that the bullets are what they purport to be, i.e., bullets from defendant’s apartment, they were properly admitted. Ladd, 885 F.2d at 956.

Defendant asserts that the prosecution’s theory of the case was possession of two rounds of ammunition, and the Court erred in instructing the jury that possession of a single bullet was sufficient. However, possession of a single bullet by a felon is sufficient to find a violation of 18 U.S.C. § 922(g)(1). United States v. Cardoza, 129 F.3d 6, 9 (1st Cir. 1997). Possession by a felon is the key element. See United States v. Verrecchia, 196 F.3d 294, 299 (1st Cir. 1999)(Where a felon is charged with possession of a firearm, the jury need not agree as to the particular firearm possessed as long as the element of possession is unanimously agreed upon.). Here, the jury had to agree as to the element of possession of ammunition and one bullet is sufficient to

constitute ammunition. Therefore, the Court did not err in instructing the jury that possession of a single bullet was sufficient to convict defendant.

Accordingly, defendant's motion is DENIED.

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RYA W. ZOBEL  
UNITED STATES DISTRICT JUDGE